

#### §4.122

#### 10 CFR Ch. I (1–1–16 Edition)

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding disabled persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to disabled persons.

(c) The exclusion of nondisabled persons from aid, benefits, or services limited by Federal statute or Executive Order to disabled persons or the exclusion of a specific class of disabled persons from aid, benefits, or services limited by Federal statute or Executive Order to a different class of disabled persons is not prohibited by this subpart.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified disabled persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

#### **§4.122 General prohibitions against employment discrimination.**

(a) No qualified disabled person shall, on the basis of disability, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of disability does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified disabled applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

#### **§4.123 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

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(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by disabled persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all-inclusive nor meant to suggest that an employer must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified disabled employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

### § 4.124 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out disabled persons or any class of disabled persons unless:

(1) The test score or other selection criterion as used by the recipient is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many disabled persons are not available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the ap-

plicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

### § 4.125 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a disabled person or as to the nature or severity of a disability. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are disabled: *Provided, That:*

(1) The recipient makes clear to the applicant that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient makes clear to the applicant that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this subpart.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided, That:*

(1) All entering employees are subjected to such an examination regardless of disability; and